

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

9
10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 4089

14 **DIANA TRAN**
15 **7132 Torrey Mesa Court**
San Diego, CA 92129

STATEMENT OF ISSUES

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about March 12, 2010, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Diana Tran
24 (Respondent). On or about August 20, 2009, Diana Tran certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on April 28, 2011.

27 ///

28 ///

JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

.....

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

1 7. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to evaluate
3 the rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation
7 furnished by the applicant or licensee.

8 8. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a
10 board within the department pursuant to law to deny an application for a license or to
11 suspend or revoke a license or otherwise take disciplinary action against a person who
12 holds a license, upon the ground that the applicant or the licensee has been convicted
13 of a crime substantially related to the qualifications, functions, and duties of the
14 licensee in question, the record of conviction of the crime shall be conclusive
15 evidence of the fact that the conviction occurred, but only of that fact, and the board
16 may inquire into the circumstances surrounding the commission of the crime in order
17 to fix the degree of discipline or to determine if the conviction is substantially related
18 to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, "license" includes "certificate," "permit," "authority,"
20 and "registration."

21 9. Section 4301 of the Code states:

22 The board shall take action against any holder of a license who is guilty of
23 unprofessional conduct or whose license has been procured by fraud or
24 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
25 not limited to, any of the following:

26

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, whether the act is committed in the course of relations as a
29 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

30

31 (l) The conviction of a crime substantially related to the qualifications,
32 functions, and duties of a licensee under this chapter. The record of conviction of a
33 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
34 States Code regulating controlled substances or of a violation of the statutes of this
35 state regulating controlled substances or dangerous drugs shall be conclusive
36 evidence of unprofessional conduct. In all other cases, the record of conviction shall
37 be conclusive evidence only of the fact that the conviction occurred. The board may
38 inquire into the circumstances surrounding the commission of the crime, in order to
39 fix the degree of discipline or, in the case of a conviction not involving controlled
40 substances or dangerous drugs, to determine if the conviction is of an offense
41 substantially related to the qualifications, functions, and duties of a licensee under this
42 chapter. A plea or verdict of guilty or a conviction following a plea of nolo

contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

• • • •

11. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

FIRST CAUSE FOR DENIAL OF APPLICATION

(June 23, 2011 Criminal Convictions for Residential Burglary & Identity Theft)

12. Respondent's application for registration as a pharmacy technician is subject to denial under section 480, subdivision (a)(1) of the Code in that Respondent was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about June 23, 2011, in a criminal proceeding entitled *People of the State*
2 *of California v. Dian Tran*, in San Diego County Superior Court, case number SCD229629
3 (which consolidated four separate complaints), Respondent was convicted on her plea of guilty to
4 violating Penal Code section 530.5, subdivision (c)(3), obtaining personal identifying information
5 of 10 or more people with the intent to defraud; two counts of violating Penal Code section 459,
6 burglary; and one count of violating Penal Code section 459, first degree burglary in that the
7 crime was committed on an inhabited house, within the meaning of Penal Code section 460. All
8 counts were charged as felonies. The remaining 44 counts of felony burglary, first degree
9 burglary, grand theft, identity theft, forgery, receiving stolen property, and possession of burglary
10 tools were dismissed pursuant to a plea agreement.

11 b. As a result of the convictions, on or about June 23, 2011, Respondent was
12 sentenced to the middle term of four years in state prison on the principal count (Pen. Code,
13 § 530.5(c)(3)). Respondent was sentenced to the upper term of three years in prison on each of
14 the remaining three counts, to be served concurrently with the principal term. Respondent was
15 given credit for 231 days.

16 c. The circumstances that led to the convictions are that on or about and between
17 January 5, 2010 and November 20, 2010, Respondent participated in at least nine residential
18 burglaries and at least four commercial burglaries, in which she stole credit cards, bank checks,
19 and personal property. Some of Respondent's victims were family members. The stolen credit
20 cards and checks were used to make fraudulent purchases at San Diego businesses, which would
21 later be returned for a cash refund.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Commission of Dishonest & Fraudulent Acts)**

24 13. Respondent's application for registration as a pharmacy technician is subject to denial
25 under sections 480, subdivision (a)(2) of the Code in that on or about and between January 5,
26 2010 and November 20, 2010, Respondent committed multiple, serious acts of dishonesty, fraud
27 and deceit with the intent to substantially benefit herself, as detailed in paragraph 12, above.

28 ///

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Commission of Acts Which if Done by a Licensee Would be**
3 **Grounds for Suspension or Revocation of License)**

4 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
5 of the Code in that she committed acts, that if done by a licensed pharmacy technician, would be
6 grounds for suspension or revocation of the license. The circumstances are as follows:

7 a. On or about June 23, 2011, as detailed in paragraph 12, above, Respondent
8 was convicted of crimes substantially related to the qualifications, functions, and duties of a
9 licensed pharmacy technician, in violation of section 4301, subdivision (l) of the Code.

10 b. On or about and between January 5, 2010 and November 20, 2010, as detailed
11 in paragraph 12, above, Respondent committed acts involving moral turpitude, dishonesty, fraud,
12 and deceit in violation of section 4301, subdivision (f) of the Code.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Denying the application of Diana Tran for a Pharmacy Technician Registration;
17 2. Taking such other and further action as deemed necessary and proper.

18 DATED: 11/1/11

19 Virginia Herold
20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

26 SD2011800662
27 80531184.doc